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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

GENERAL ELECTRIC COMPANY, *Petitioner*,

v.

JAMES B. CAREY, AS PRESIDENT OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
A. The Proceedings	3
B. The Arbitration Agreement	3
C. The Grievances and the Challenges to Their Arbitrability	4
1. Grievances Challenged Because of Alleged Failure to Adhere to the Procedures Set Forth in the Grievance and Arbitration Provisions	4
2. Grievances Challenged on the Ground That the Limitation on the Authority of the Arbitrator Excluded Them from Arbitration	6
3. Grievances Challenged on the Ground That They Are Within the Exclusive Jurisdiction of the National Labor Relations Board	8
4. Grievance Challenged on the Ground That the Award Sought Would Be Unlawful	9
Argument	10
Introduction	10
A. There Is No Conflict of Decisions Which Warrants Grant of the Petition with Respect to the Procedural Objections to Arbitration	10
B. The Construction of Article XV, 3(b) of the Agreement as a Limitation on the Award Making Authority of the Arbitrator Raises No Issue of Importance	13
C. The Decision Below That Arbitration Was Not Preempted by the Jurisdiction of the National Labor Relations Board Raises No New Issue of Importance	14

Page

D. No Important Question of Federal Law Is Raised by Petitioner's Other Objections to Arbitration 16

Conclusion 19

Table of Cases

Bethlehem Steel v. *S.L.R.B.*, 330 U.S. 767 17

Boston Mutual Life Insurance Co. v. *Insurance Agents Int'l. Union*, 258 F. 2d. 516 (C.A. 1) 11

Brass & Copper Workers v. *American Brass Co.*, 272 F. 2d. 849 (C.A. 7) 11

Carey v. *Westinghouse*, 11 N.Y. 2d. 452, No. 485, Oct. Term, 1962 13, 16

Deaton Truck Line v. *Local 612*, 314 F. 2d. 418 (C.A. 5) 11

Employing Plasterers Ass'n., 118 NLRB 17 15

General Aniline & Film Corp., 89 NLRB 407 15

International L & W Union v. *Juneau Spruce Corp.*, 342 U.S. 237 15

International Association of Machinists v. *Hayes Corp.*, 296 F. 2d. 238 (C.A. 5) 17

International Union of Electrical, Radio & Machine Workers v. *General Electric Co.*, 174 Atl. 2d. 298 18

IUE v. *Westinghouse*, 268 F. 2d. 352 (C.A. 3) 13

Livingston v. *John Wiley & Sons, Inc.*, 313 F. 2d. 52 (C.A. 2), cert. granted May 13, 1963 (No. 934, Oct. Term, 1962) 11, 12

Local 174, Teamsters v. *Lucas Flour Co.*, 369 U.S. 95 18

Local 748 Electrical, Radio & Machine Workers v. *Jefferson City Cabinet Co.*, 314 F. 2d. 192 (C.A. 6) 11

Local 1505, Int'l. Brotherhood of Electrical Workers v. *Local 1836, Int'l. Assn. of Machinists*, 304 F. 2d. 365 (C.A. 1) 15

McDonnell Aircraft Corp., 109 NLRB 930 15

Plumbing Contractors Ass'n., 93 NLRB 1081 15

Radio Corp. of America v. *Association of Prof. Eng. Personnel*, 291 F. 2d. 105 (C.A. 3), cert. den. 368 U.S. 898 11, 13

Retail Clerks v. *Lion Drygoods, Inc.*, 369 U.S. 17 15

Page

Retail Clerks Union, Local 770 v. *Thriftimart, Inc.*, ——— Cal. ———, 47 CCH. Lab. Cas. § 18,214 15
Smith v. *Evening News Ass'n.*, 371 U.S. 195 14
Straight Line Foundry & Machine Corp. v. *Wojcik*, 9 N.Y. 2d. 867 14
United Steelworkers v. *American Mfg. Co.*, 363 U.S. 564 10
United Steelworkers v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593 10, 17
United Steelworkers v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574 10

OTHER AUTHORITIES

Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482. 12
House Conf. Rep. No. 510 on H.R. 3020, 1 Leg. Hist. of L.M.R.A., 1947, p. 565 14

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v.

JAMES B. CAREY, AS PRESIDENT OF INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO, *Respondent*.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

Opinions Below

The opinion of the Court of Appeals is reported 315 F. 2d 499 and is printed with the Petition (A. 36-60).[1] The opinion of the District Court is reported at 213 F. Supp. 276 (A. 3-35).

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[1] Figures in parenthesis, unless otherwise indicated, when preceded by "A" refer to the Appendix to the Petition; when preceded by "it" they refer to pages in Appendices below. Numbers followed by the letter "a" refer to Appellant's appendix below; those followed by the letter "b" refer to Appellee's appendix.

Jurisdiction

The jurisdiction of this Court is invoked by virtue of 28 U.S.C. § 1254(1), 62 Stat. 928.

Questions Presented

1. In an action to compel arbitration pursuant to a collective bargaining agreement which provides that a court shall direct arbitration of grievances raising issues concerning the interpretation or application of the agreement, are objections based on the alleged failure of the Union to follow procedures set forth in the grievance and arbitration provisions to be referred to the arbitrator.

2. Whether where a contract provides that no arbitrator shall have authority to establish or modify wages, salary or piece rates or job classifications or to decide the appropriate classification of any employee, the Court below erred in construing this provision of the agreement to be a limitation on the award-making power of the arbitrator and not a clear and unambiguous exclusion of grievances from arbitration.

3. Whether a court may enforce arbitration of grievances which allege that the employer has violated its agreement by assigning work covered by the collective bargaining agreement to employees outside the collective bargaining unit and refusing to apply the terms and provisions of the agreement to the performance of such work.

4. Whether the right to arbitrate a particular grievance may be made to turn upon a prediction that the arbitrator may direct the performance of an illegal act?

5. Whether the provision that the agreement shall be governed by the law of the State of New York requires the application of legal principles other than those enunciated by the court below.

Statutes Involved

In addition to Sections 9(b) and 301 of the Labor Management Relations Act, 1947, referred to in the Petition at pp. 3-4, consideration of the merits of the third question presented would also involve Sections 8(b)(4)(D), 9(c), and 10(k) of that Act. (61 Stat. 140-146, 73 Stat. 525, 542, 29 U.S.C. § 158-160)

Statement

A. *The Proceedings*

Respondent, sometimes referred to herein as "Union", instituted a proceeding in the New York Supreme Court on October 24, 1961, to compel arbitration of the twelve grievances involved herein. Petitioner, sometimes referred to herein as "Company", removed the proceedings to the District Court for the Southern District of New York, where, after answer and upon the Union's motion, an order was entered on April 19, 1962, directing the Petitioner to arbitrate all but one of the grievances.

Upon appeal and cross-appeal, the United States Court of Appeals for the Second Circuit, on March 11, 1963, directed that all the grievances should be arbitrated. Still not content, the Company seeks to delay further the arbitral process with respect to all the grievances by the instant petition for a Writ of Certiorari.

B. *The Arbitration Agreement*

The arbitration agreement, contained in Article XV Section 1 of the collective bargaining agreement, provides that any grievance not settled in the grievance procedure (Article XIII) shall be submitted to arbitration if it involves "the interpretation or application of a provision of this agreement" or a disciplinary penalty alleged to

have been imposed without just cause. (R. 40a-43a). Section 2(b) of Article XV provides that if either party advises the American Arbitration Association that a *grievance* does not, in its opinion, raise an arbitrable issue, the Association will process a request for arbitration of such grievance only after a final judgment of a court finding that the grievance "raises arbitrable issues" and directing arbitration. Utilizing this provision, the Company challenged the arbitrability of all the grievances here involved, and the Association suspended the processing of requests for their arbitration.

C. *The Grievances and the Challenges to Their Arbitrability*

The grievances are grouped according to the grounds advanced by petitioner to bar them from arbitration. Because Petitioner's statement of the grievances fails to indicate the questions of fact and interpretation which raise arbitrable issues in each of the grievances, it is necessary to restate them more clearly.

1. Grievances Challenged Because of Alleged Failure to Adhere to the Procedures Set Forth in the Grievance and Arbitration Provisions.

(a) In *National Docket Nos. 4910 and 4928*, the Union charged that Petitioner violated the agreement by placing junior employees on jobs in violation of its contractual obligation to assign them to the grievants, who were senior employees. In each case, the grievance was filed as soon as the grievant learned that the job had been assigned to the junior employee. (R. 51a-52a, 53a-54a).

The Company contends that these grievances are not arbitrable because they were not filed "within a reason-

able time after the occurrence *or knowledge* of the situation, condition or action of Management giving rise to the grievance. . . ." (Article XIII, 2(a)(1), R. 9a-10a, emphasis added).

(b) *National Dockets Nos. 3979 and 3971*, charged that two stewards were improperly denied "top seniority" in violation of Article XII, Section 1(b), of the collective bargaining agreement and then laid off. These grievances were held in abeyance at Step Two within the grievance procedure to await the outcome of a pending arbitration proceeding between the parties involving the identical issue. Within two weeks after the awaited award was rendered, the Union proceeded to Step Three of the grievance procedure. The Company contends that the grievances are not arbitrable because submitted to this step "more than three months after" its consideration at Step 2. (Art. XII, 2(c), R. 11a, 56a).

(c) In *National Docket Nos. 4910, 4928, 4665, 5039, 4922, 4454 and 4606-4611*, the Company challenged the arbitrability of each of the grievances on the ground, among others, that, though the Union requested arbitration within the time prescribed in the arbitration agreement, (Article XV, 1, R. 41a), it did not comply with a subsequent provision of the same Article (Article XV, 2(a)) because it failed within ten days after the request for arbitration, to request the American Arbitration Association to submit a panel of names from which an arbitrator may be chosen. The Rules of the Association provide that a panel of names will be submitted to the parties without such a request. The parties have in the past relied upon the Rules, which are embraced in the agreement. (R. 41a, 1b-6b).

Each of these grievances raises arbitrable issues con-

cerning the interpretation and application of the Agreement. Nos. 4454, 4910, and 4928 involve the assignment of jobs to junior employees in lieu of recall of laid off senior employees pursuant to the agreement. Nos. 4665 and 5039 involve the failure to compensate employees as required. Nos. 4606-4611 and 4922 involve assignment of bargaining unit work to non-bargaining unit employees.

The Court below rejected all the aforesaid challenges on the ground that the questions raised by the Company were for the arbitrator, and not the Court to decide.

2. Grievances Challenged on the Ground That the Limitation on the Authority of the Arbitrator Excluded them from Arbitration.

(a) *National Docket No. 4665* complained that the Company paid certain Testmen at rates of pay lower than their rate of pay as set forth in the Job Manual and failed to advance them as required by the Progression Schedule. (R. 58a).

(b) *National Docket No. 3830* claimed that the Company recalled two millwrights rated at the R-17 rate of pay to their jobs but paid them at the lower R-12 rate. (R. 59a).

(c) *National Docket No. 5039* charged that the Company had improperly deducted from the earinings of a group of employees a sum equivalent to the difference between the amount they had previously earned on a special rate while working on an experimental job and the base pay guaranteed to them on the experimental job. (R. 61a-62a).

(d) *National Docket No. 4922* charged that, in violation of the agreement, the Company had shrunk the

coverage of the agreement by converting the job of Crystal Processing from an hourly rated job within the contract unit to a salaried job and unilaterally removed it from the coverage of the contract though "there was no change in the duties, functions or supervision of the employees involved." (R. 64a).

(e) *National Docket No. 4557* complained that the Company had given a job to one employee in violation of the seniority rights of another employee. (R. 69a-70a).

(f) *National Docket No. 4485* complained that the Company had discharged an employee by refusing to recall him because its dispensary had determined that he was "an epileptic." (R. 46a, 25a).

The Company contends that none of these grievances is arbitrable because of Article XV, 3(b) of the agreement which provides:

> "It is specifically agreed that no arbitrator shall have the authority to establish or modify any wage, salary or piece rate, or job classification, or authority to decide the appropriate classification of any employee. *Subject to the limitations on the authority of an arbitrator, nothing in this subsection (b) shall prevent arbitration of a grievance involving a violation of this Agreement.*" (R. 81a, emphasis supplied).

The Union disputed that the relief requested in any of the grievances required the arbitrator to exceed the limitations on his authority.

The Court of Appeals construed Article XV, 3(b) to be a limitation on the award-making power of the arbitrator and not an exclusion of these grievances from the arbitration agreement contained in Article XV 1(a).

3. Grievances Challenged on the Ground that they Are Within the Exclusive Jurisdiction of the National Labor Relations Board.

(a) *National Docket Nos. 4606-4611* complained that the work of the maintenance plumbers consisting of hooking up and unhooking plumbing connections in the plant, traditionally performed by the plumbers in the bargaining unit, had been assigned to machinist repairmen when they were performing other work on machines which were to be connected or disconnected to hydraulic systems (R. 72a). Neither the machinists nor their Union made a claim that the work belonged to them. The machinists are in a different bargaining unit and are not covered by the instant collective bargaining agreement.

(b) *National Docket No. 4114* complained that the Company had brought in a group of "laboratory technicians" who were outside the bargaining unit to do assembly work alongside of assemblers covered by the agreement. The Company refused to apply the agreement to those "laboratory technicians." (R. 66a-68a).

(c) *National Docket No. 4922* charged that the Company had improperly removed crystal processers from the coverage of the contract. (R. 64a).

The Company challenged arbitrability on the ground that these grievances "invade the province of exclusive National Labor Relations Board jurisdiction."

The Court of Appeals, applying the principle of *Smith v. Evening News Ass'n*, 371 U.S. at 197 (A. 52) and citing *H.R. Rep. No. 510, 80th Cong. 1st Sess.* 41-42, 52, (1 Leg. Hist. of L.M.R.A. 1947, at p. 556) held that in an action to compel arbitration under Section 301(a), "the possibility

vel non of an exercise of jurisdiction by the Board is irrelevant" (A. 56).

4. Grievance Challenged on the Ground that the Award Sought Would Be Unlawful

In *National Docket No. 4557* the Union complained that an employee, Haslam, was hired for a vacancy in a bargaining unit job, but that another employee, Hatch, was entitled to the job by virtue of seniority. Haslam had, at a prior time, worked in a classification in the bargaining unit. He then transferred to a salaried job out of the covered bargaining unit. The R-14 vacancy for which Haslam was subsequently rehired into the unit was not within the classification formerly held by Haslam. Indeed, the classification he had previously held no longer existed. (R. 69a-70a).

The grievance involves the interpretation and application of Article X(3) of the agreement which reads as follows:

> "Employees who have been or may be transferred to jobs outside the bargaining unit *may be returned to their former classification* in the bargaining unit in accordance with total length of continuous service. Employees in any plant who have been certified in a bargaining unit not covered by this Agreement shall have no rights under this Agreement." (R. 69a-70a, emphasis supplied).

The Company contended that the grievance was not arbitrable because an award which applied the second sentence of the quoted provision would be unlawful.

The court below held that the grievance raised a question of the interpretation and application of this provision for the arbitrator, whose award cannot be presumed in advance to entail a violation of the law.

ARGUMENT

Introduction

The Petition in this case is an ideal illustration of the ease with which arbitration can be transformed from an easy, informal, and expeditious way to resolve employee grievances into a distant goal to be reached only by way of a long, arduous, and costly judicial proceeding. Each of the grievances is a "run-of-the-mill garden variety" grievance commonly presented for solution by arbitration (A. 48). Unless the grounds for court intervention to obstruct arbitration are tightly confined, as this Court has already indicated they are to be,[2] the purposes of arbitration will be subject to ready frustration through the device of conjuring up a multiplicity of obstructive reasons not to arbitrate. By denying certiorari in this case and avoiding any extension of the accumulated delays in the grievances here involved, this court can confirm its intent to deny recalcitrant parties the use of the courts as an instrument of delay, and through delay, avoidance of the fulfillment of contractual rights and obligations.

A. There Is No Conflict of Decisions Which Warrants Grant of the Petition With Respect to the Procedural Objections to Arbitration.

The first question raised by the Petition is whether, where the parties have agreed that a court shall direct arbitration of grievances which raise issues involving the interpretation and application of their collective bargaining agreement, disputes over asserted failures to adhere to pro-

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[2] *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564; *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574; *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593.

cedures set forth in the grievance and arbitration provisions of the agreement are to be resolved by the courts or by an arbitrator. Contrary to Petitioner's assertion, there is no conflict among the circuits on this question.

Since this Court rendered its decisions in the *Steelworkers* cases,[3] three United States Courts of Appeals and Court of Appeals of New York have been in agreement with the court below that such issues are for an arbitrator to decide where the contract provides merely that issues concerning interpretation and application of the contract are arbitrable.[4] The asserted conflict is between these decisions on the one hand and two pre-*Steelworkers* Circuit Court decisions which involved similar contract provisions.[5]

The contract provisions in this case differ from those in the cases in which the asserted conflict exists. Here the parties have specifically provided by their contract that the role of the courts is to be limited to a determination "that the grievance upon which arbitration has been requested raises arbitrable issues," Art. XV, 2(b). Thus, consideration of issues raised by the grievance is separated from questions of compliance with the grievance procedure. If a grievance involves the interpretation or application of the Agreement, by its terms arbitrable issues have been raised. Once the court has determined that a grievance

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[3] See footnote 2 above.

[4] *Livingston* v. *John Wiley & Sons, Inc.*, 313 F. 2d 52 (C.A. 2), cert. granted May 13, 1963 (No. 934, Oct. Term, 1962); *Radio Corp. of America* v. *Association of Prof. Eng. Personnel*, 291 F. 2d 105 (C.A. 3); *Denton Truck Line* v. *Local 612*, 314 F. 2d 418 (C.A. 5); *Local 748*; *Electrical, Radio & Machine Workers* v. *Jefferson City Cabinet Co.*, 314 F. 2d 192 (C.A. 6); *Straight Line Foundry & Machine Corp.* v. *Wojcik*, 9 N.Y. 2d 867. Contrary to Petitioner's assertion, certiorari has not been granted in the *Jefferson City Cabinet* case, and the petition is pending at present.

[5] *Boston Mutual Life Ins. Co.* v. *Insurance Agents Int'l Union*, 258 F. 2d 516 (C.A. 1); *Brass & Copper Workers* v. *American Brass Co.*, 272 F. 2d 849 (C.A. 7).

raises arbitrable issues, its role is ended. The grievance is plainly subject to arbitration, and any remaining objections are to be raised in that forum.[6]

Even on the broader question which exists where the court's role is not provided in the agreement, the post-*Steelworkers* holdings faithfully implement the decisions of this Court in the *Steelworkers* cases and properly limit the judicial function to an examination of the arbitration clause to determine whether the grievance comes within its scope and is not expressly excluded from arbitration. They properly held that a dispute over the application of a provision of the grievance procedure is itself a dispute within the scope of the arbitration clause which embraces "interpretation or application" of a provision of the agreement. See Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, at p. 1511, cited in *Warrior*.

Until such time as a circuit court reaches a decision in square conflict with those of the Second, Third, Fifth and Sixth Circuits, notwithstanding the *Steelworkers* principles, review by this Court is not needed.[7]

The grant of certiorari by this Court in *Livingston* v. *John Wiley & Sons, Inc.* 313 F. 2d 52 (No. 934 October Term, 1962, May 13, 1963) does not warrant a similar grant of a writ on the question here presented. That case presents an overriding issue, not present here, as to the arbitrability of the coverage of the agreement. Moreover, the contract

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[6] The Company's attempt to turn this provision to its advantage, by asserting without demonstration that it shows that the contract contemplates determination of preliminary questions by the court, blandly ignores the contract definition of the preliminary questions which the court is to consider.

[7] Those decisions of district courts which are in conflict with the decision here involved reveal a preoccupation with the inapposite common law of commercial contracts, and are not consonant with the principles enunciated by this Court in the *Steelworkers* cases. This Court does not sit to review decisions of district courts.

provisions in the instant case limit the court's role in this case, regardless of the outcome of the *Livingston* case.

B. The Construction of Article XV, 3(b) of the Agreement as a Limitation on the Award Making Authority of the Arbitrator Raises No Issue of Importance.

The second issue raised in the Petition is merely a question of the interpretation to be given Article XV, 3(b) of the Agreement. This question is virtually identical to the second question which Respondent in this case sought to raise in its Petition in *Carey* v. *Westinghouse*, No. 485, October Term, 1962, which the Company here asserts is in conflict with the court below. That this Court denied certiorari as to that question, while granting it as to the other question raised in that case, confirms that such questions of contract construction do not warrant consideration on certiorari.

The decision below is in harmony with decisions of the Third Circuit.[8] No decision of a United States Court of Appeals is in conflict with it.

The court below properly construed Article XV, 3(b) in accordance with the admonition of this Court in *Warrior & Gulf*, supra. There is no "forceful evidence of a purpose to exclude" grievances from arbitration in this provision. Article XV, 3(b) presupposes arbitration; it does not preclude it. When the parties intended to write an exclusion clause they knew how to do it; they excluded the insurance and pension plans from arbitration by express, unambiguous language in the very next subdivision of Article XV, 3. As the Court below found, this reading does not render the limitation on the arbitrator's powers meaningless, nor does it

[8] *I.U.E.* v. *Westinghouse*, 268 F. 2d 352 (C.A. 3); *Radio Corporation of America* v. *Associated Professional Engineering Personnel*, 291 F. 2d 10 (C.A. 3); cert. den. 368 U.S. 898.

make it impossible for him to render a meaningful award if he finds merit in the grievances. (A. 47-48).

Carey v. *Westinghouse*, *supra*, on which Respondent relies is a state court decision which is in clear conflict with the Third Circuit *Westinghouse* decision, for both *Westinghouse* cases involved the same contract provisions. If that conflict did not warrant a grant of certiorari in *Carey*, clearly certiorari is unwarranted in this case.

C. The Decision Below that Arbitration Was Not Preempted By the Jurisdiction of the National Labor Relations Board Raises No New Issue of Importance.

The third question raised in this case relates to the arbitrability of work assignment grievances. The Company contends that these grievances may give rise to some issues over which the National Labor Relations Board might assert jurisdiction and that the Board, therefore, has exclusive jurisdiction over them.

The decision of the court below is in accord with *Smith* v. *Evening News Ass'n.*, 371 U.S. 195. It is also in accord with the legislative intent of Section 301(a). "The conference agreement makes clear that when two remedies exist, one before the Board and one before the courts, *the remedy before the Board shall be in addition to, and not in lieu, of other remedies*": House Conf. Rep. No. 510 on H.R. 3020, p. 52, 1 Leg. Hist. of L.M.R.A., 1947, at p. 556.

The principle of *Smith*, *supra*, applies even more forcefully to a representation question, which, before the NLRB, brings on but a fact finding, non-adversary proceeding resulting in no cease and desist order. The expertise of the Board in a representation case is no greater than an unfair labor practice case. Section 301(a) does not depend upon the representation provisions of the Act nor upon the unfair

labor practice provisions Cf. *Retail Clerks v. Lion Dry-goods, Inc.*, 369 U.S. 17; *International L & W Union v. Juneau Spruce Corp.*, 342 U.S. 237.

Since *Smith*, the Supreme Court of California in *Retail Clerks Union, Local 770 v. Thriftimart, Inc.*, ——— Cal. ———, 52 LRRM 2935, 47 CCH. Lab. Cas. ¶18,214, followed *Smith*, and held that in a Section 301(a) action the jurisdiction of the court is not displaced by the jurisdiction of the NLRB to remedy unfair labor practices or to designate appropriate bargaining units.

There is no conflict here with *Local 1565, Int'l Bhd. of Elec. Workers v. Local 1836, Int'l Assn. of Machinists*, 304 F. 2d 365 (C.A. 1). In that case, which was decided before *Smith*, this Court vacated the judgment and remanded the case with direction to dismiss the complaint because it was moot (No. 419, October Term, 1962, March 18, 1963).

We have assumed up to this point that the three work assignment grievances here involved may present issues which fall within the NLRB jurisdiction. But it is not at all certain that the Board would adopt the view of the Company and consider these grievances to involve representation or certification questions. The Board recognizes the distinction between certification matters and work assignment disputes which are to be resolved through the grievance and arbitration procedures. *McDonnell Aircraft Corp.*, 109 NLRB 930. *See also General Aniline & Film Corp.*, 89 NLRB 407; *Plumbing Contractors Ass'n.*, 93 NLRB 1081; *Empoqina Plasterers Ass'n.*, 118 NLRB 17.

In each of the grievances which the Company refuses to arbitrate on this ground, there is an identifiable pure work assignment question which is grist in the mills of arbitrators.

While it is true that this Court has granted certiorari with respect to a similar issue raised by the *contrary* deci-

sion in *Carey* v. *Westinghouse*, 11 N.Y. 2d 452, No. 485, this Term, there is nothing in the nature of the issue or in this case which necessitates a grant of certiorari herein to provide a further vehicle for consideration of the issue. Moreover, as correctness of the decision below is clearly indicated, it is earnestly urged that the pending of the *Westinghouse* case not be permitted to delay a prompt denial of certiorari in this case so that the arbitration of the several grievances involved herein, many of which are completely unrelated to this issue, will not be further frustrated.

D. No Important Question of Federal Law Is Raised By Petitioner's Other Objections to Arbitration.

1. Petitioner's third question arises out of simple seniority grievance. Contrary to Petitioner's assertion, the relief requested is not in violation of the law and the Court below did not assume that it was. As the Court below found, there are a number of alternative dispositions of the grievance available to the arbitrator, which do not even touch upon the basis of the Company's assertion of illegality.[9] At least one would grant the Union the relief requested.

The possibility that an arbitrator may issue an illegal award is no different from the possibility that he may exceed his authority. Indeed, even where a contract is lawful on its face, the possibility always lurks that an arbitrator may be persuaded to grant discriminatory or other unlawful relief. In each case, this Court has clearly charted the course.

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[9] An arbitrator "might decide that the second sentence . . . is severable and should be discarded but that the union's claim is supportable under the first sentence," the legality of which is not under attack. (A-59).

The principles of the *Steelworkers* case leave no doubt that the role of the court is minimal, and that it is the arbitrator's judgment and not that of the court for which the parties have bargained. "The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on awards." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, at 596.

Whether or not an award should be enforced after arbitration if its legality is in doubt, clearly it is a flagrant breach of the *Steelworkers'* principles for a court to decide in advance of arbitration that an arbitrator will render an unlawful award and thus have "the final say." As this Court has held, "the power to decide a matter can hardly be made to depend on the way it is decided." *Bethlehem Steel* v. *S.L.R.B.*, 330 U.S. 767. Whether the award will be enforceable is a question "for another day." *International Association of Machinists* v. *Hayes Corp.*, 296 F.2d 238, 244 (C.A.5).

The court below had no difficulty in rejecting the Company's invitation to have it adjudicate the merits of the grievance, and nothing short of a major reversal of Congressionally announced policy would warrant a different result. Clearly this question raises no substantial issue.

2. Petitioner's fourth question is based on its contention that the lower court did not give effect to Article XV, 4 of the Agreement (R.43a) which provides that New York law shall govern the agreement. The Company complains that the Court of Appeals "ignored this question" (p. 25 of the Petition) but concedes that the District Court faced and disposed of this question.

The Company does not say what the law of New York is in respect of the construction of the arbitration clause in

this agreement, or even that the New York law is different from the federal law. Nor does the Company present any argument to show that under New York law any of the grievances are not arbitrable.

The short of the matter is that in a Section 301(a) action, the New York law is the same as the federal law, as the District Court held. *Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95. *See Int. Union of Electrical, Radio & Machine Workers v. General Electric Co.*, 174 Atl. 2d 298. Unless the agreement was to be construed as freezing New York law as of the time of the contract, a construction specifically rejected by the District Court (A8), it is immaterial whether the law applied is labeled Federal or New York. The propriety of the construction of the contract clearly does not warrant certiorari.[10]

[10] It may be inquired why, if Petitioner believed that federal law and New York law differ and that New York law is applicable, it elected to remove the proceeding from the New York Supreme Court where it was commenced by Respondent to the United States District Court on the ground that Section 301 conferred jurisdiction on the federal courts. Query also whether its insistence that New York law governs this agreement is inconsistent with its assertions elsewhere in its petition that the decision raises important questions of federal law.

Conclusion

For the reasons set forth above, the petition for a writ of certiorari should in all respects be denied.

Respectfully submitted,

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